

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-
Defendant

v.

APPLE, INC.,

Defendant,
Counterclaimant.

Case No. 4:20-CV-05640-YGR

DECLARATION OF DAVID LOS IN
SUPPORT OF NON-PARTY MICROSOFT
CORPORATION'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF TRIAL
EXHIBITS

I, David Los, declare as follows:

1. I am currently a Principal Group Program Manager at Microsoft Corporation. The facts stated in this declaration are based on my own personal knowledge and, if called as a witness, I could and would testify to those facts.

2. In my current role at Microsoft, I am responsible for leading consumer and enterprise initiatives for Outlook.com and Outlook Web app. I have been employed with Microsoft since May 2008. Prior to my current role, I served as product and program managers related to the Outlook and Exchange server products. Based on my work experience, I am familiar with Microsoft Outlook's business strategies and sales and revenue data. Microsoft keeps that information confidential to protect itself from potential harm.

3. I understand that Apple, Inc. intends to submit the documents designated DX-3110 and DX-5402 that contain Microsoft confidential information as trial exhibits in the above-captioned legal case. I also understand Microsoft is filing a motion to seal portions of those trial exhibits, and I make this declaration in support of that motion. I further understand that the documents designated DX-3110 and DX-5402 are substantively identical and that because of that Microsoft has filed a single highlighted and sealed copy of the document as part of its motion to seal, attached hereto as Exhibit A. I have reviewed that document and explain below why the

1 highlighted portions of the document contain sensitive and highly confidential information that
2 would cause serious harm if publicly released.

3 4. I have reviewed the documents designated DX-3110 and DX-5402, which I
4 understand is a summary of information regarding Microsoft Outlook's business strategy and the
5 performance of its mobile app as offered on iOS and Android.

6 5. Microsoft treats the information in DX-3110 and DX-5402 sensitively, and only
7 discloses it to a select group of individuals on a need-to-know basis.

8 6. The highlighted portions of DX-3110 and DX-5402 in the version filed under seal
9 are confidential to Microsoft and would result in harm if publicly disclosed. The highlighted
10 information at page 1 reflects confidential information about the circumstances under which
11 certain Outlook account types are eligible to receive ads. If Microsoft's ad partners were to obtain
12 such information, it would place Microsoft at a competitive disadvantage by revealing
13 Microsoft's monetization strategy and providing Outlook consumers with information that would
14 allow them to circumvent Microsoft's ad policy.

15 7. The highlighted information at page 2 reflects confidential year-over-year sales
16 data for Outlook across two platforms for the years 2015 to 2020. It thus discloses Outlook's
17 experienced growth and decline in ad business over a six-year period. If Outlook's ad partners
18 were to obtain such information, it would place Outlook at a competitive disadvantage during
19 contract negotiations with those partners by revealing the degree to which a particular partner
20 contributes to Outlook's revenue and sales. Outlook's ad partners could deduce their market share
21 of Outlook's revenue by comparing their respective sales to the aggregate ad sales information
22 provided in DX-3110 and DX-5402. Outlook ad partners with greater ad revenue shares would
23 have increased leverage in negotiations that they would otherwise not have but for the disclosure
24 of this information.

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1 I declare under the penalty of perjury of the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed this 29th day of April 2021 in Everett, Washington.

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5 /s/ David Los

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ATTESTATION

I, David P. Chiappetta, am the ECF user whose ID and password are being used to file the above Declaration. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that David Los has concurred in the aforementioned filing.

/s/ David P. Chiappetta
David P. Chiappetta